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ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, the 24th August, 1956.*

S.R.O. 1942.—Whereas the election of Shri Bulagouda Rayanagouda Shidal-ingappa, resident of Taluk Bijapur, District Bijapur, as a member of the Legislative Assembly, Bombay, from the Bijapur constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Doctor Sardar Basawaraj Karabasappa Nagur, resident of Taluk Bijapur, District Bijapur;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

ELECTION TRIBUNAL, BIJAPUR, BIJAPUR

ELECTION PETITION No. 1/1956

1. Nagur, Doctor Sardar Basawaraj Karbasappa, Registered Medical Practitioner of Bijapur—*Petitioner*.

*Vs.*

1. Bulagouda Rayangouda Shidlingappa, Secretary, District Development Board, Bijapur.
2. Baling Nabisa Maktumsa, Retired Teacher of Bijapur.
3. Patil Shivangouda Shidangouda, officiating Patil of Kannur, taluka Bijapur, District Bijapur—*Respondents*.

N. S. Metrani (*Chairman*).

G. N. Katre and A. A. Adarkar (*Members*).

This is a petition under the Representation of People Act, 1951, filed by Basawaraj Karbasappa Nagur, who has described himself in the petition as

Doctor Sardar. A bye-election was held for the Bijapur Town and part of Bijapur Taluka Constituency of the Bombay Legislative Assembly on 27th November 1955. The petitioner and respondents Nos. 1 to 3 were the candidates for the seat and respondent No. 1 Bulagouda Rsyangouda Shidlingappa, a pleader of the Bijapur Bar, was declared elected, he having secured 9825 votes. The petitioner had obtained 8916 votes and respondents Nos. 2 and 3 had respectively secured 5591 and 1342 votes. Respondent No. 1's name was published in the Bombay Government Gazette, Part IV-C, dated 8th December, 1955, at page 1917 as having been elected to the above mentioned Constituency. The petitioner has claimed a declaration that the election of the returned candidate, respondent No. 1, is void on the following among other grounds:

That the election had not been a free election by reason that the corrupt practice of undue influence had extensively been resorted to by the returned candidate, respondent No. 1, or at his instance and connivance, that coercion and undue influence had been exercised or resorted to by a section of the Muslim community headed by the brother of Sajjadanashin of the Hashim Pir Darga on the community to vote for the Congress candidate, respondent No. 1, that undue influence was exercised by Shri C. J. Ambli, M.L.A., and the President of the Karnatak Pradesh Congress Committee over Shri Basawantagouda Patil of Minchnal, the brother of the officiating Patil of Minchnal, by threatening him that if he and his brother voted in favour of the petitioner, the Patilki watan of his family would be forfeited and that his brother would be removed from the Patilki, that with the connivance of respondent No. 1 Shri B. D. Jatti, Deputy Minister of the Government of Bombay, promised the Muslim voters in the Jumma Masjid locality that a large number of them would be employed in the Project Areas and Community Blocks if they voted for respondent No. 1, that the said Shri B. D. Jatti had stated in a public meeting held for the purpose of promoting respondent No. 1's election that the petitioner had no license to practice medicine, that this statement of Shri B. D. Jatti was calculated to prejudice the prospects of the petitioner's election, that respondent No. 1, his agents and other persons with the connivance of respondent No. 1 had procured a motor car belonging to Shri Ramji Devji for the conveyance of the electors of Ibrahimpur to the polling booth situated near Gol Gumbaz, that Shri Ambli in a public meeting held on the Radio Madan at Bijapur had threatened the cobblers with eviction from the municipal plots if they failed to vote in favour of respondent No. 1, that Shankargouda Padaganur, M.L.A., staged a sit-down strike by placing a chappal belonging to Siddappa Ramappa Dang on his head and thereby induced the Harijan voters of Shivangi to believe that they would be rendered objects of spiritual censure, that respondent No. 1 and at his connivance Shri B. D. Jatti and Shri Ambli induced the Muslim voters of the Shapet locality to vote for respondent No. 1 at the bye-election holding out promises that if they did so they would get the orders of the State Government and the Bijapur Municipality regarding the removal of the encroachment in the form of a Darga which they recently put up cancelled, that Shri H. S. Almel, the Vice-President of the Bijapur Municipality, had induced the Muslim voters of Bijapur to vote for the Congress candidate, respondent No. 1, since the Congress leaders had come to their help in preserving the so-called Darga in spite of the orders for its removal, that respondent No. 3's nomination paper was improperly accepted and this had materially affected the election of the petitioner, that respondent No. 3 was a disqualified person for being chosen as a Member of the Legislative Assembly as he held the office of Patil of the village Kannur at the time of the nomination, that the said office of the village Patil is an office of profit under the Government of the State, that the petitioner had gone on 21st November, 1955 to the village Atalatti near Torvi to address a meeting in connection with his election, that one Nagappa Satteppa Sonnad and his two associates were set up by Shri Ambli for the purpose of intimidating the petitioner and thereby forcing him to stop the election speech, that when this intimidation was given the said Nagappa Sonnad was armed with a scythe and that the petitioner had given the particulars of the illegal and corrupt practices in the list appended to his petition as provided in section 83(2) of the Representation of People Act, 1951.

2. Respondent No. 1 in his written statement Ex. 16 denies all the material allegations made against him in the petition and the list of particulars and submits that those allegations are *mala fide* and untrue. He submits in paragraph 3 of his written statement that it is false to allege that the election has not been free and that corrupt practice of undue influence has been resorted to at his connivance. He submits that the election was absolutely free and no corrupt practice of undue influence has been resorted to. He further submits that the allegation regarding coercion and intimidation resorted to by the brother of Sajjadanashin of Hashim Pir Darga is also false. The allegations made regarding the alleged interference with the voters by Sarvashri C. J. Ambli, B. D. Jatti, H. S. Almel and Shankargouda Padaganur are all denied. In paragraph 7, he

submits that Shri B. D. Jatti had never promised a section of the Muslim voters in the Muslim locality that a large number of Muslims would be employed in the Project Arcas and Community Blocks if they voted in favour of respondent No. 1. Similarly, it is stated in paragraph 8 that Shri B. D. Jatti had not stated in a public meeting that the petitioner had no license to practice medicine and that he was not a registered medical practitioner. The allegation with regard to the use of Shri Ramji Devji's car for the purpose of conveying the voters to the polling booths is denied *in toto* in paragraph 9 of his written statement. So also the allegation that Shri Anibli had threatened the cobblers of Bijapur with eviction from the municipal plots is totally denied. With regard to the Darga incident, respondent No. 1 in paragraph 12 of his written statement has stated that he was not aware that the Muslims of Shapet locality had recently put up a grave on the public road and on an elaborate enquiry it was ordered to be removed by the Government. He further submits that he did not know that Shri H. S. Almél, Vice-President of the Municipality, had issued orders to the municipal staff to remove the Darga on 26th November, 1955. He submits that he came to know of the alleged encroachment when the municipal servants with the aid of the police were removing the encroachment. He further submits that Shri B. D. Jatti or Shri Ambli had not brought pressure to bear on the municipal authorities to remove the said encroachment nor had they assured the Muslim community that they would use their good offices and official position to get the Government order cancelled. With regard to the pamphlet alleged to have been issued by Shri Almél, respondent No. 1 submits in paragraph 13 of his written statement that he came to know of this pamphlet some days after the election. In paragraph 14, respondent No. 1 states that he was not aware that respondent No. 3 was holding an office of a Patil, that the petitioner had not raised any objection about the invalidity of the nomination paper of respondent No. 3 and that he is now estopped from contending that the nomination paper was improperly accepted. Further, it is submitted by him that if respondent No. 3 had not stood as a candidate, almost all the votes secured by respondent No. 3 would have been recorded in his favour, that the petitioner would not have got any appreciable number of those votes and hence the result of the election was not materially affected by the acceptance of respondent No. 3's nomination paper. With regard to the incident at Atalatti, respondent No. 1 in paragraph 15 states that the meeting alleged to have been arranged by the petitioner on 21st November, 1955 at the village was not dispersed by Nagappa Sonnad and his two associates at the instigation of Shri Ambli. It is submitted by respondent No. 1 that the whole incident as alleged by the petitioner had been manipulated by the petitioner for his own purposes. With regard to the complaint relating to the above incident stated to have been filed by the petitioner with the police, respondent No. 1 submits that he is not aware of the said complaint. In short, respondent No. 1's defence to the petition is that the election has not been tainted by the exercise of any undue influence, coercion or intimidation or any other alleged corrupt practice and it had been a perfectly free election and the petitioner's prayer that respondent No. 1's election should be set aside should not be granted.

3. Respondent No. 2 Baising Nabisab Maktumsab, a retired teacher, has filed his written statement Ex. 14. He has generally supported the petitioner in his allegations that the election of respondent No. 1 was not a free and a proper election. In para 2 of his written statement, respondent No. 2 has stated that the Sajjadanashin of Hashim Pir Darga had made false propaganda among a section of the Muslim leaders to secure the election of respondent No. 1. He has also supported the contention of the petitioner that respondent No. 3's nomination paper had been improperly accepted. He has supported the petitioner's prayer that respondent No. 1's election should be declared void.

4. Respondent No. 3 has filed his written statement at Ex. 12. He has alleged that the office of the Patil of the village is not an office of profit within the meaning of the Representation of People Act and that he was not in any way disqualified from contesting the seat for the Assembly. He has however submitted that the entire election was vitiated by the illegal actions of the Returning Officer in rejecting his polling agents. He submits that the Returning Officer was entirely wrong in rejecting the forms containing the names of his polling agents, that respondent No. 3 had sent a wire to the Election Commissioner, New Delhi, and the Deputy Secretary to Government and the Chief Electoral Officer, Bombay, that the Returning Officer though he had received an order from the Election Commissioner to accept the polling agents of respondent No. 3, he did not communicate acceptance of his polling agents to him with the result that none of his polling agents was allowed to function at the polling stations, that respondent No. 1 and his agents spread rumours that respondent No. 3 had withdrawn from the election as he had no authorised agents anywhere in the polling stations, that respondent No. 3 had secured a large number of votes at Kannur where he

was personally present, that this would go to show that respondent No. 1 had spread rumours that respondent No. 3 had withdrawn from the election, and that for this irregularity committed by the Returning Officer, respondent No. 3 prayed that the whole election should be set aside.

5. By its order Ex. 31, the Tribunal decided that it was not open to the petitioner as well as respondents Nos. 2 and 3 to claim a trial on issues with regard to the grounds not raised in the petition. Accordingly the following issues were raised at Ex. 30.

- (1) Does the petitioner prove that the election of respondent No. 1 has not been a free election by reason that undue influence was exercised by Shri C. J. Ambli on Basawantagouda Patil of Minchnal on 26th November, 1955 at the Congress Bhavan at Bijapur that the later's brother would be deprived of his Watan and Patilki if he failed to vote for respondent No. 1 or if he canvassed for any other candidate?
- (2) Does the petitioner prove that on 27th November, 1955, at Shivangi, Shri Shankargouda Padaganur, with the connivance of respondent No. 1, started a sit-down strike by placing a chappal on his own head so as to induce the Harijan voters to vote for respondent No. 1 as alleged in para 4(i) of the petition and para 2 of the list annexed to the petition?
- (3) Does the petitioner prove that Shri B. D. Jatti promised, with the connivance of respondent No. 1, on 25th November, 1955, in the Jumma Masjid locality at Bijapur, employment of Muslims in the Project Areas and Community Blocks if they voted for respondent No. 1?
- (4) Does the petitioner prove that, with the connivance of respondent No. 1, Shri B. D. Jatti knowingly made publication of an untrue statement that the petitioner was posing himself as a medical practitioner and that he was practising medicines without a license and without being registered so as to prejudice the prospects of the petitioner's election?
- (5) Does the petitioner prove that respondent No. 1 and his agents and other persons, with the connivance of respondent No. 1, procured the motor vehicle bearing No. BYZ 1268 belonging to Shri Ramji Devji for the conveyance of the voters of Ibrahimpur to the polling booth situated near Gol Gumbaz and back?
- (6) Does the petitioner prove that Shri C. J. Ambli intimidated, with the connivance of respondent No. 1, in the election meeting at the Radio Maidan, on 24th November, 1955, the cobblers of Bijapur City that if they failed to vote for respondent No. 1 they would be evicted from the Municipal plots which they had occupied and further asked them not to vote for the petitioner?
- (7) Does the petitioner prove that respondent No. 1 and at his instance, Sarvashri B. D. Jatti and C. J. Ambli induced the Muslims of Shapet locality to vote for respondent No. 1 holding out the inducement that the Darga would be spared from being removed if they voted for respondent No. 1 as alleged in para 4(j) of the petition and para 7 of the list annexed to the petition?
- (8) Does the petitioner prove that Shri H. S. Almel, the then Vice-President of the Bijapur Municipal Borough, induced the Muslim voters at Bijapur to vote for respondent No. 1 since the Congress leaders had come forward to preserve the Darga as alleged in para 4(k) of the petition and para 7 of the list annexed to the petition?
- (9) Does the petitioner prove that respondent No. 3's nomination was improperly accepted as alleged and, if so, is the result of the election materially affected thereby?
- (10) Does the petitioner prove that Shri C. J. Ambli set up on 21st November, 1955, at Atalatti, at the meeting convened by the petitioner, (1) Nagappa Shettappa Sonnad, (2) Shivappa Ningappa Sonnad, and (3) Shidraya Siddappa Sonnad to intimidate the petitioner by using criminal force and that the aforesaid persons forced the petitioner to stop the meeting?
- (11) What order as to costs?

(12) What order?

6. Our findings are:

(1) to (7), (9) and (10) in the negative.

(8) Yes, but the correctness of the statement in his pamphlet (Ex. 131) with regard to the Congress leaders is not accepted by the Tribunal.

(11) and (12) As under.

#### *Reasons*

7. The petitioner seeks to have the election of respondent No. 1 declared void on the various grounds set out in his petition and the list of particulars subjoined to it. In support of the allegations made by him in his petition and the list of particulars, he has adduced oral and documentary evidence which is rather voluminous. The evidence adduced by the respondent No. 1 takes the form of evidence in rebuttal. Before we take up the issues raised above for consideration, it seems useful and necessary to refer to the procedure and also to the standard of proof which are necessary in appreciating the evidence adduced on either side in such cases. It has been conceded on both sides that the trial must be held according to the provisions of the Civil Procedure Code, but the learned pleader for respondent No. 1 contends that the standard of proof required in such cases is the one governing a criminal trial, meaning thereby that in cases of corrupt practice the burden of proof is on the petitioner and that burden never shifts and that the standard of proof is as in criminal cases and the benefit of doubt will go to the respondent. On the other hand, it is contended by the learned pleader for the petitioner that in such cases the preponderance of evidence should be the test as in civil cases. In our opinion, however, as corrupt practices, if established, entail serious consequences, the standard of proof that is required will be as in criminal cases. This view of ours is fortified by the decisions in *Dr. K. N. Gairola vs. Gangadhar Maithani* (E.L.R. Vol. VIII, Part II, page 105), *Sri Ram vs. Mohammad Taqi Hadi* (E.L.R. Vol. VIII, Part II, page 139) and *T. C. Basappa vs. T. Nagappa* (E.L.R. Vol. III, Part III, page 197).

8. Taking the incidents mentioned in the petition and the list of particulars in their chronological order, we will refer first to the incident at the village Atalatti which is about 5-6 miles from Bijapur. The petitioner's case with regard to this incident is that on 21st November, 1955 he had gone to Atalatti at about 6 p.m. to address a meeting in connection with his election, that one Nagappa Sonnad asked the petitioner to close the meeting, that when he was about to address the meeting, Nagappa and his two associates Shivappa and Siddraya forced him to stop the meeting, that one of the associates, viz., Shivappa, was at that time armed with a scythe, that by reason of the intimidation the petitioner had to give up the meeting, that these persons had given this threat to the petitioner at the instigation of Shri C. J. Ambli who had his lands there. The petitioner complains that as a result of this intimidation practised by these three Sonnads, his election prospects at the village Atalatti were injuriously affected. At the trial, the petitioner led evidence to show that these Sonnads were cultivating the lands of Shri Ambli and one Gangawa, who according to the petitioner, lives with Shri Ambli but is not his wife. Shri Ambli has admitted that he has got his lands at that village. He has stated that Gangawa is his remarried wife and that she has also a land there. According to Shri Ambli, none of these three Sonnads was in any way connected with the cultivation of his lands. Shri C. J. Ambli states in his evidence that he had gone to Bombay in connection with the sitting of the Legislative Assembly on or about the 16th November and he returned to Bijapur on the 24th as the Assembly sitting had lasted from the 18th upto the 22nd. With regard to this point, the petitioner has examined himself at Ex. 56 and Shivayogayya Basalingayya Honutgi (Ex. 94). The petitioner has admitted in his evidence that he had not issued any programme announcing the meetings to be held in connection with his election at different places and that he had gone to Atalatti on 21st November, 1955 without previous intimation. It seems to us unlikely that Shri Ambli who had been away from Bijapur from the 17th had any opportunity of knowing that the petitioner was going to visit Atalatti on the 21st to hold a meeting in connection with his election. There is no satisfactory evidence to show that any of these three Sonnads was cultivating the lands of Shri Ambli or Gangawa. Shri Ambli has stated that his and Gangawa's lands were being cultivated by him personally through one Bhimanna Mangoli who is paid one rupee per day. Shivayogayya Honutgi (Ex. 94) was admittedly the polling agent and canvasser of the petitioner and this shows that he is deeply interested in the petitioner. It does appear from the certified copy of the complaint Ex. 243 given to the police on 21st November, 1955 by Shivayogayya (Ex. 94) that the three Sonnads must have attempted to stop the meeting which the petitioner was going to address at Atalatti on 21st. But there is nothing in the complaint to show that Shri Ambli was connected in any way with those three Sonnads. It appears to us that the petitioner in his election speeches was attacking the

Bombay Tenancy Act. This is clear from para 17 of Shri Ambli's cross-examination (Ex. 191) when a question was put to Shri Ambli whether he knew that the petitioner was making speeches against the Tenancy Act. This means that the petitioner was making speeches against the provisions of the Tenancy Act and it is not unlikely that in some villages he had met an opposition from the villagers who stood to benefit by reason of the provisions of the Tenancy Act. Under these circumstances, we are not prepared to hold that the petitioner has succeeded in establishing that the incident at Atalatti was inspired by Shri Ambli as alleged by the petitioner. Before taking leave of this incident we may observe that the petitioner attempted to show that Gangawa was not the married wife of Shri Ambli. Shri Ambli has stated before us that Gangawa was a child widow before he remarried her in 1929 in Udki form. It is not necessary for us to go into the question whether or not Gangawa is the Udki wife of Shri Ambli as it is not germane to the present inquiry.

9. We next come to the election meeting admittedly held on 21st November 1955 at the Radio Maidan, which is near the Municipal Office and the Bijapur Taluka and City Police Stations. This meeting was held for supporting the candidature of respondent No. 1 and Sarvashri C. J. Ambli and B. D. Jatti had come to address the meeting. The petitioner's case as set out in the petition and the list of particulars is that numerous cobblers occupying the municipal plots had assembled at the meeting and Shri Ambli in the presence of Shri B. D. Jatti gave a threat to the cobblers that if they failed to vote for respondent No. 1 they would be evicted from the municipal plots which were in their occupation. He also asked the cobblers not to vote for the petitioner. Shri C. J. Ambli and respondent No. 1 have denied that there is any truth in this allegation. Evidence has been given in support of this allegation by the petitioner and his four witnesses Irappa Murigoppa Munshilal (Ex. 84), Tejmalsingh Bhimsingh Bansi (Ex. 95), Shantappa Chanbasappa Bidri (Ex. 98) and Gurappa Shivappa Chadchan (Ex. 101). Admittedly the petitioner was not present at the meeting and he says that he came to know about the alleged threat from Irappa (Ex. 84) and Tejmalsingh (Ex. 95) a day or two after the election. We have therefore first to consider the evidence of Irappa (Ex. 84) and Tejmalsingh (Ex. 95). Irappa (Ex. 84) states that during the course of Shri Jatti's speech, Shri Ambli called Sharnayya Vastrad, the Secretary of the District Congress Committee, and asked him to bring all the cobblers who were occupying the nearby shops, that accordingly Sharnayya went out and brought the cobblers to the meeting, that then Shri Ambli said: "Our Congress organization is a big one. We have eliminated all bad elements from it. Only good people have remained. Therefore you should give us votes. We understand that you are going to vote for non-Congress candidate. Mind that if you do not vote for the Congress you will be evicted from the municipal plots". We think that Irappa's evidence cannot be safely trusted. He contradicts the petitioner by stating in his examination-in-chief that he did not inform the petitioner about the above meeting held at the Radio Maidan. This makes us doubtful whether Irappa was really present at the meeting. He admits in his cross-examination that he was a supporter of the petitioner during the last bye-election having accompanied him to several places for canvassing. This position is admitted by the petitioner also. If this witness had been really present at the meeting and Shri Ambli had given the alleged threat to the cobblers, he would not have failed to bring it to the notice of the petitioner the same day.

10. Tejmalsingh (Ex. 95) was not admittedly present at the meeting. He says that he learnt about the meeting at the Radio Maidan from Irappa referred to above. We do not therefore consider that his evidence advances the petitioner's case at all.

11. The next witness Shantappa (Ex. 98) states in his examination-in-chief that he was present at the Radio Maidan, that Sharnayya Vastrad had brought the cobblers at the bidding of Shri C. J. Ambli and that Shri Ambli had given threats as alleged. This witness has stated in his cross-examination that he was quite certain that no cobblers had attended the meeting before Sharnayya brought the cobblers. We find it difficult to accept the evidence of this witness. If it were true that no cobbler had attended the meeting and that cobblers were brought to the meeting at the instance of Shri Ambli, the petitioner would never have failed to mention this fact in his petition or in the list appended to it. As there is no reference whatsoever to the allegation that Sharnayya Vastrad

had brought the cobblers to the meeting at the instance of Shri Ambli in the petition and the list, we do not accept the evidence of Shantappa (Ex. 98) with regard to the threat..

12. Without Gurappa (Ex. 101) is a friend of Sanappa and according to him they were both sitting in the High Class Hotel near the Radio Maidan. If this witness had been present at the meeting and the incident had really happened as alleged, the petitioner would have come to know of all its details and the allegation that cobblers were brought by Sharnayya Vastrad at the instigation of Shri Ambli would have found mention in the petition. We are not, therefore, inclined to hold the oral evidence led by the petitioner on this incident is sufficiently trustworthy. As against this, both Sarvashri C. J. Amoli and B. D. Jatti have stated on oath that no such incident had occurred. They have examined one Ramchandra Shivappa Jamkhandi—a cobbler—(Ex. 216), who is one of the occupants of the municipal plots. He says that he was present at the meeting addressed by Sarvashri Jatti, Ambli, Bidri, Mahaldar and Kanbur under the chairmanship of Shri Ambli. He is definite in stating that Shri Ambli did not send anyone to fetch the cobblers nor were any threats given to them by Shri Ambli. He appears to us to be a witness of truth. The suggestion made in the cross-examination that he is a kinsman of one Kabade, who is a Congress M.L.A., has no foundation. We do not think that Shri Ambli who was not in any way connected with the Municipal affairs would have been in a position to give the threat of eviction to the cobblers. If any such threat had been given in public, it would not have passed unchallenged. It seems also not likely that a leader of Shri Ambli's position and experience in life would have been guilty of such a highly indecent and tactless piece of conduct. We therefore hold that the petitioner has failed to prove this incident.

13. We next take up the meeting held in the Chandabaydi locality on 24 November, 1955 at about 8 or 8-30 p.m. Admittedly Shri B. D. Jatti, the Deputy Minister for Health, addressed the meeting. The petitioner's case with regard to this incident is that Shri Jatti being a staunch supporter and a friend of respondent No. 1 had stated at the meeting that the petitioner had no license to practice medicine and that the petitioner was posing himself as a medical practitioner without being registered as such. The petitioner's case is that these imputations against him were false to Shri Jatti's knowledge and they were deliberately made by him with a view to lower him in the estimation of the voters and thereby to injure his prospects at the election. Shri B. D. Jatti and respondent No. 1 who were present at the meeting have denied this allegation. We accept the petitioner's case that Shri Jatti is a staunch supporter and a friend of respondent No. 1. They both come from the same village Savalgi in Jamkhandi Taluka and were taking education in the same College at about the same time. We however find it difficult to accept the petitioner's suggestion that respondent No. 1's appointment as Secretary of the District Rural Development Board was due to the influence of Shri Jatti. Respondent No. 1 is a practising pleader and his evidence shows that he was connected with a number of public institutions. For instance, he was on the Governing Body of the Vijaya College, Bijapur, a member of the Managing Committee of the S. S. High School and one of the Trustees of the Sardesai of Navalgund and Shirsangi Charitable Trust, and we think that his appointment was most probably due to his abovementioned qualifications. The question we have to decide in connection with this incident is whether Shri Jatti had addressed the meeting to the effect that the petitioner held no license to practice medicine and that he was posing as a medical practitioner without being registered. We have carefully considered the evidence on this point and have come to the conclusion that no such words were uttered or could have been uttered by Shri Jatti. In the first place, we may point out that the petitioner himself had approached Shri Jatti in the year 1941 at Jamkhandi when he was practising as a pleader. Shri Jatti has stated in his evidence that he was taking a leading part in the political activities of the Jamkhandi State and he had risen before merger of that State to the position of the Chief Minister. Evidently, therefore, the petitioner on obtaining his medical certificate from an Ayurvedic medical institution at Belgaum had approached Shri B. D. Jatti for the purpose of setting up his practice at Jamkhandi. He admits that he had taken his certificate and a letter of recommendation from Shri S. R. Kanthi, who is now the Deputy Speaker of the Assembly. There can therefore be no doubt that the petitioner was holding a certificate issued by a recognised Ayurvedic medical institution and this certificate had come to the notice of Shri Jatti, so far back as 1941. The petitioner has been practising at Bijapur since a good many years and he has been taking active part in the political activities of Bijapur. Shri Jatti could not have been therefore unaware of

the fact that the petitioner was openly practising medicine in a city like Bijapur for a number of years. It was not disputed before us that no person desiring to practice any system of medicine can do so without his name getting registered under the Medical Practitioners Act of 1938. The law provides a penalty for practising medicine without getting duly registered. The petitioner himself has produced in this case the Register of Practitioners in Indian Medicine issued by the Government of Bombay under the Bombay Medical Practitioners' Act (Act XXVI of 1938 *vide* Ex. 59, 1949 Edition). The petitioner's name is entered in this Register. In view of all this, we do not think that a responsible person like Shri B. D. Jetti would have had the hardihead to say in an open meeting that the petitioner was practising medicine without a license and without getting himself registered. Shri Jatti has given evidence as to what exactly he had said. He stated that when he was addressing the meeting, he happened to notice a cloth beard hung on an electric pole nearby and having on it the words "Sardar Doctor Nagur". We may state that the petitioner is not a Sardar as that word is ordinarily understood. From his own evidence, it appears that the title of Sardar was conferred upon him by some citizens of Bijapur in a public meeting. Shri Jatti has stated that he was dealing with the qualifications of the respective candidates who were to contest the election, that he addressed the audience at that meeting to support the Congress candidate, respondent No. 1, that when he was about to refer to the qualifications of the petitioner, he had noticed the above mentioned board and that on seeing the word "Doctor" he had stated that "in official correspondence we call the medical practitioners holding Ayurvedic qualification as Vaidyas and not doctors and that the petitioner was not a doctor in that sense". Shri Jatti evidently wanted to suggest by reference to a Government circular that the petitioner was not entitled to call himself as a Doctor. Now, ordinarily, persons practising Ayurvedic or Unani system of medicine, do not call themselves doctors but they call themselves and are called by the public as Vaidyas or Hakims. The official circular has been produced at Ex. 189. There may be a difference of opinion as to whether Shri Jatti acted very properly in introducing this topic the distinction between a doctor and a Vaidya when he himself has stated that he did not himself make any distinction between a Vaidya and a doctor. Still we think that all that Shri Jatti must have stated was that according to him the petitioner was not a medical practitioner who was entitled to call himself a doctor. The petitioner and many other persons may think that anyone who practises medicine is entitled to call himself a doctor. This is a matter of opinion but we do not think that Shri Jatti uttered the words that the petitioner was practising medicine without license and without getting himself registered. We may add that there is no evidence on the record to show that the petitioner possesses any but purely Ayurvedic qualifications for practising medicine. The petitioner himself was not present at the meeting, but evidence in support of his allegation has been given by three witnesses Gururao Bhavanrao Kulkarni (Ex. 80), Yeshwant Kusappa Shapur (Ex. 88) and Tejmalsingh (Ex. 95). Gururao Kulkarni (Ex. 80) states in his examination-in-chief as follows: "Mr. Jatti explained to the audience what Government had done for the public. He said that respondent No. 1 was a Congress candidate, a pleader and a social worker and that therefore they should cast their votes in his favour". As regards the petitioner, Dr. Nagur, Mr. Jatti said: "that he did not hold any degree. He further said that they should not vote for Dr. Nagur but for respondent No. 1 who was a Congress candidate. Mr. Jatti did not say anything more about the petitioner Dr. Nagur". Of the three witnesses examined on behalf of the petitioner, this witness appears to us to be superior by virtue of his social status and education. So when this witness says that Shri Jatti had only said that the petitioner did not hold any doctor's degree, we find it difficult to hold that the petitioner's case that Shri Jatti had uttered the words that "the petitioner did not hold a license" is true. The petitioner states that he came to know about the alleged offensive words of Shri Jatti from this witness. But this witness states that he had no talk with petitioner about his meeting and Shri Jatti's speech. The evidence of Gururao Kulkarni (Ex. 80) does not inspire confidence because he says in his cross-examination that he was not canvassing for the petitioner while Yeshwant Shapur (Ex. 88) says that he did not know the petitioner before the election. According to the petitioner, Yeshwant and G. B. Kulkarni were both his canvassers. Tejmalsingh (Ex. 96) states that Shri Jatti had stated that the petitioner was not a doctor, that he did not hold doctor's certificate and that he was deceiving the public in the guise of a doctor. We think that this witness is an enthusiastic supporter of the petitioner and therefore he has gone further than what the other witnesses have stated with regard to the alleged speech of Shri Jatti. We find it difficult to hold that Shri Jatti could have stated in a public meeting that the petitioner was not a registered medical practitioner and he hold no license. We have come



to the conclusion that certain references which Shri Jatti had made with regard to the medical qualifications of the petitioner have been twisted by the petitioner for the purposes of making out a case of corrupt practice under section 123(5) and his witnesses have tried to give before us an exaggerated and even somewhat perverted version of the speech really made by Shri Jatti. We therefore find issue No. 4 in the negative.

14. Issue No. 3 is based upon the petitioner's allegations with regard to the meeting held in the Jumma Masjid locality on the 25th November 1955. It is not disputed that this meeting was addressed by Shri B. D. Jatti, who was then the Deputy Minister for Health. According to the petitioner, Shri Jatti said at the meeting that most of the Muslims of that locality were poor and that he would secure employment for them in the Project Areas and Community Blocks. The petitioner states in para 19 of his evidence that at this meeting pleaders Messrs. Mahaldar and Kanbur, the merchant Ramji Devji and Muslim leaders Kalyani and Baxi and respondent No. 1 were present and in the presence of these persons Shri Jatti stated that if the Muslims voted in favour of respondent No. 1, who was a Congress candidate, they would be provided with employment in the Project Areas and Community Blocks. Two witnesses have been examined in support of this case of the petitioner. The first witness is Mansursab Babasaheb Jahagirdar (Ex. 102). He states in examination-in-chief that Shri Jatti stated that he was in charge of the Labour Portfolio, that the Muslims of Bijapur were poor and that they should vote for respondent No. 1, a candidate set up by the Congress. He further states that Shri Jatti also stated that if the Muslims voted in favour of the Congress candidate, respondent No. 1, he would secure employment for them in the Samaj Vikas Centre. Lastly, he says that after the termination of the meeting, he and the other Muslims met together and decided that since the Minister had assured them employment, the poor people among them would be benefited and that therefore they should help the Congress. This witness also refers to the Darga incident which will be considered by us later on. We have considered his evidence with due care and it is doubtful to us whether he attended the meeting at all. In his cross-examination he states that he does not know who presided over the meeting. He also does not know whether any persons besides Shri Jatti addressed the meeting. His capacity to understand things seems to be very low. He was asked a question in his cross-examination what he meant or understood by Samaj Vikas Jojana and he said that it meant cleaning and repairing the gutters.

15. The next witness is Aminsahab Maktumsab Mujawar (Ex. 152). In his examination-in-chief he makes a curious statement. He states: "Mr. Jatti said that all should vote for the Congress, they had started a business called Samaj Vinayak, that they would secure employment for us in that business and that therefore we should vote for the Congress". This witness was serving in the oil shop of one Mohamadsahab Loni and a suggestion was made to him, which of course he denies, that he had come to give evidence at the instance of Mohamadsab Loni who was a supporter of the petitioner. We are not impressed by the evidence of this witness as his name does not appear in the list of witnesses Exs. 21 and 38. It may be noted that the petitioner has stated in his evidence that he came to know about Shri Jatti's speech from Dadepir and Martujasab, but none of these witnesses is examined in this case and no reasons have been given for not examining either of them. As against this sort of evidence on the side of the petitioner, we have the statements of responsible persons like Sarvashri Jatti and Ambli who frankly admit that they had come to support the candidature of respondent No. 1. A number of petitioner's witnesses have stated before us the substance of the speeches of Shri Ambli and other Congress leaders which is that the Congress was a good organization, that respondent No. 1 was set up by the Congress as a candidate, that the Congress had done a lot of good to the people and that respondent No. 1 being a Congress candidate, he should be supported at the election. In para 27 of the petitioner's evidence he has stated as follows: "On every Friday, I used to hold meetings and expose the selfish and unjust activities of the local Congress leaders including Messrs. Ambli, Dubey and Kanbur. I am the President of the body known as Janata Hitarakshaka Sangh at Bijapur. The body came into existence in 1951. Since then I have been its President. The Bijapur people gave me the title of Sardar in a public meeting." We think that it is perfectly legitimate for the candidates and their supporters at the election meetings to bring to the notice of the electors the good and bad points of the various candidates standing for the election and if Sarvashri Jatti and Ambli stated at the meeting that the Congress was a good organisation, that it had

done a lot of good to the people, and that respondent No. 1 was a Congress candidate and that therefore he should be elected, we do not think that any legitimate exception can be taken to that sort of speech. The question before us is whether at the electioneering speech Shri Jatti made an offer to the Muslim voters that they would be given employment in the Project Areas and Community Blocks if they voted in favour of respondent No. 1. We think there is no substance in this allegation against Shri Jatti. In the first place there is no evidence whatsoever to show that any Project Areas or Community Blocks were started in Bijapur taluka and the Muslims of the Jumma Masjid locality or for the matter of that Bijapur town had got employment. We have it in evidence that the Project Areas and Community Blocks were started by Government in the India Taluka of this district. As a Deputy Minister in charge of Health, and now in charge of Labour also, Shri Jatti might have visited these Community Blocks and Project Areas in Indi taluka but we do not think that any evidence has been led that as a result of the alleged speech of Shri Jatti any Muslims from Bijapur City had sought employment in the Project Areas or Community Blocks. If any such evidence had been led on behalf of the petitioner to show that soon after Shri Jatti's speech, Muslims of Bijapur town sought employment in the Project Areas and Community Blocks in this district and they were able to get employment there, then there would have been some substance in the allegation made by the petitioner. Shri Jatti has definitely stated that he had no connection with the Project Areas or Community Blocks. According to him, these welfare schemes are in charge of the Political and Services Department and his Department of Health and Labour comes into picture only if its services are required by the Political and Services Department. In the absence of any evidence before us to show that any Muslims of Bijapur had been employed in any of the welfare schemes started in Indi taluka as a result of the alleged assurance given by Shri Jatti we do not think that the specific allegation made against Shri Jatti can be held proved. We are inclined to think that Shri Jatti and other Congress leaders might have referred to the various welfare activities undertaken by the Congress Government but there is no evidence whatsoever to show that the votes of the Muslims were bargained for by offering prospects of employment to them in the Project Area and Community Blocks. Therefore our finding on issue No. 3 is in the negative.

16. We now take up the consideration of issue No. 1. The petitioner's allegations in respect of this issue are that Baswantgouda Patil, the brother of the police patil of Minchnal, which is 12-13 miles from Bijapur, had visited Bijapur on 28th November 1955, that while he was passing by the Congress Bhavan, he was called inside the Bhavan by Shri C. J. Ambli and there he was given a threat that if he and his brothers failed to vote for the Congress candidate the Patilki of his brother would be resumed. In this connection, the petitioner has examined himself, Baswantgouda Bhimangouda Patil (Ex. 97), Bhimanna Tammanna Ajanal (Ex. 137) and Sangappa Gireppa Mendegar (Ex. 138). The petitioner was admittedly not present when the alleged threat was given to Baswantgouda. According to him, he came to know of this threat from witnesses Bhimanna Ajanal and Sangappa Mendegar. We have to consider from the evidence of Baswantgouda and these two witnesses whether the giving of the alleged threat is proved. Baswantgouda (Ex. 97) admits in his evidence that he was the polling agent for respondent No. 1 at Minchnal. He states in his examination-in-chief that the petitioner had come to Minchnal twice, firstly 2 or 3 weeks ahead of the election and for the second time when it was a fortnight ahead, and on both the occasions he had addressed meetings. On the first occasion the petitioner asked him to vote for him and on the second occasion he insisted that he should vote for him and he assured him of his help. Ex. 60 shows that respondent No. 1 had appointed this witness as his polling agent on 16th November 1955, i.e., only about 10-11 days before the election. It appears from the evidence of this witness that either out of vanity or self interest, he was trying to please both the candidates and we do not think that such a witness can be safely trusted. At the time of the election, he was an active supporter of respondent No. 1 and after the election, he has come forward to support the petitioner who has sought to challenge the election of respondent No. 1. We think there is some force in the argument of Shri A. C. Angadi, the learned pleader for respondent No. 1, that this witness has been won over by the petitioner because normally one does not expect an active supporter of a successful candidate to turn round and to support the defeated candidate in the Election Petition. We also find much substance in the argument that on the eve of the election, Shri Ambli would have rather tried to make the polling agent than give him a threat. So, on probabilities also, we do not think that the case for the petitioner stands supported.

17. The other two witnesses Bhimanna Ajanal (Ex. 137) and Sangappa Mendegar (Ex. 138) are from Minchnal. Bhimanna states that on his return from Bijapur, Baswantgouda told him that he had been called by Shri Ambli to his office at the Congress Bhawan and that he had said to him that he had learnt that the people of Minchnal were going to vote for the petitioner and that if Baswantgouda did not see to it that the villagers voted for respondent No. 1, the Patilki watan would be confiscated. Baswantgouda further told him that he had accordingly agreed to secure votes for respondent No. 1 and that when this talk took place in the Minchnal Chavdi, Sangappa and Bhimanna Muttalla were present. He further states that he, Sangappa and Bhimanna Muttalla told Baswantgouda that they would think over the matter but Baswantgouda said that there was no need to think and that they should all vote for respondent No. 1. The witness lastly states that in view of this talk with Baswantgouda, he and his friends decided that half the votes should be given to the petitioner and the remaining half to respondent No. 1, that this decision of theirs was communicated to the villagers and that this was done with a view to see that the Patil of the village was not harassed. From the evidence of this witness it appears to us that he is a very strong supporter of the petitioner. He states as follows: "Dr. Nagur had come to our village twice. He had come to the temple of Sangayya. I was sent for there. I had told the people to vote for Dr. Nagur. Respondent No. 1 also had come to our village, but we did not meet each other. After our decision in the chavdi to vote for respondent No. 1 and Dr. Nagur by giving half and half votes, respondent No. 1 came to our village, but we did not meet each other. Sangappa Mendegar was a polling agent, but I do not remember whether he was for Dr. Nagur or any other person. Sangappa Mendegar did not canvass for anybody. He is too good a man to canvass for anybody". We do not think that this witness is speaking the truth on the point when he states that he does not know for whom Sangappa was the polling agent because we have it from the petitioner himself that Sangappa was his polling agent. The fact that this witness even did not care to see respondent No. 1 when he had come to address the meeting shows that he is a very staunch supporter of the petitioner and as we think that Baswantgouda has been own over by the petitioner it is not necessary to consider the evidence of this witness and Sangappa Mendegar, the polling agent, in greater detail. They appear to be friends and partisans of the petitioner and though Baswantgouda appears to have been own over, respondent No. 1 had secured only 54 votes at the Minchnal polling centre as against 251 polled by the petitioner. It has not been shown by the petitioner that the villagers of Minchnal had actually divided the votes half and half. In view of the heavy polling in favour of the petitioner at Minchnal, we hold that the petitioner has failed to prove his case. Hence our finding on this issue in the negative.

18. We now take up for consideration issues Nos. 7 and 8. The petitioner's case as stated in paras 4(k) and (j) and item No. 7 in the list of particulars attached to the petition is that in the Shapet locality in Ward III of Bijapur town, some Muslims had recently put up a tomb in the middle of the public street, that on inquiry the State Government had passed orders for removal of the said encroachment from the street, that the Bijapur Municipality had been given directions in the matter, that although the order for removal of this encroachment had been passed long back, they were sought to be executed purposely on the eve of the election, that Shri H. S. Almel, a Muslim leader and the then Vice-President of the Bijapur Municipality had fixed 26th November, 1955, a date prior to the election, for removal of this encroachment with the aid of the police, that a part of the encroachment was removed on the morning of the 26th, that in the meantime, respondent No. 1, Sarvashri B. D. Jatti and Ambli came on the scene and had brought pressure on the municipal authorities, that as a result of this pressure the work of removal of the encroachment was abandoned and that the abovementioned leaders assured the Muslims that the orders regarding the removal would be got cancelled by using their influence of the Muslims voted in favour of respondent No. 1. The petitioner in item No. 7 of the list has definitely stated that the whole incident of the 26th, i.e., carrying into effect of the order of the Collector for removal of the encroachment and its sudden stoppage after a part of the encroachment had been removed had been manœuvred by respondent No. 1 and other Congress leaders and proof of this manœuvring is to be found in the pamphlet style "Appeal to the Muslim Brethern" issued by Shri H. S. Almel Vice-President of the Municipality. Respondent No. 1 in his reply has stated that the facts given in paragraphs (k) and (j) are twisted. He states that he was not aware that the Muslims of Shapet locality had recently put up a tomb on the public road and that after elaborate inquiry the said tomb was ordered to be removed from the street. He further states that he was not aware that an order was passed by Shri Almel for the removal of the tomb on the 26th. In short, his case is that he came to know of the order for

removal of the tomb only when the municipal servants with the aid of the police were engaged in the act of removing the encroachment. Of course, he denies that Sarvashri B. D. Jatti and C. J. Ambli and he himself had brought pressure on the municipal authorities and ordered them to stop the work of removal. He also says that no sort of assurance was given to the Muslims that the order of removal would be cancelled as alleged by the petitioner. The learned pleader for the petitioner waxed very eloquent in his argument. When discussing the evidence on this point he used very strong language in criticising the conduct of respondent No. 1 and Sarvashri Jatti and Ambli. We have therefore given our anxious consideration to the facts touching the incident and we have come to the conclusion that the petitioner has not succeeded in proving beyond doubt that the corrupt practice of undue influence as alleged by him has been established against respondent No. 1 or Sarvashri Jatti and Ambli, whom he has described as his agents for the purpose of election. We may take it as beyond controversy that Sarvashri B. D. Jatti and C. J. Ambli are in the position of the agents of respondent No. 1. Admittedly Shri Ambli as the President of the Karnatak Pradesh Congress Committee had played a leading part in securing the Congress ticket for respondent No. 1 and Shri B. D. Jatti being an intimate friend of respondent No. 1 had played an active part in helping the cause of respondent No. 1 in this bye-election. Shri Jatti has admitted that he had specially come from Bombay to Bijapur for helping respondent No. 1 in his election propaganda.

19. The learned pleader for the petitioner invited us to hold that Shri H. S. Almel, who was the Vice-President of the Bijapur Municipality, must also be held to be the agent of respondent No. 1, but we hesitate to accept that position for these reasons. Shri Almel is one of the 55 persons who has signed the pamphlet Ex. 78. It appears that a number of leading lawyers of Bijapur Bar have signed the pamphlet. Some Muslims have also signed it and among them is Shri Almel. We do not think that this fact by itself is sufficient to make Shri Almel as an agent of respondent No. 1. The petitioner does not state in his evidence that Shri Almel had been canvassing for respondent No. 1. From the evidence it appears that the Muslim leaders who were formerly in the Muslim League had joined the Congress. Shri Almel is not a member of the Congress. In para 9 of his deposition Ex. 103, he has stated as follows: "Mr. Payannavar was the President of the Municipal Borough when I was its Vice-President. We belong to one and the same party. In March 1956, a fresh election was held. At present Mr. Kavi, who is a Congressman, is the President of the Municipal Borough and Mr. Bakshi, who is also a Congressman, is the Vice-President. At present we are in the minority". We are inclined to think that Shri Almel had put his signature on the pamphlet Ex. 78 because he wanted to be in the company of some of the leading people of Bijapur who wanted to support respondent No. 1 in the bye-election.

20. The petitioner has not alleged in his petition that Shri H. S. Almel was respondent No. 1's agent or canvasser. All that he has stated therein when referring to the Darga incident is that Shri H. S. Almel had issued a pamphlet (Ex. 131) appealing to the voters and had stated therein that the Congress leader had come to help the Muslims in preserving the Darga and that therefore they should unhesitatingly vote for the Congress candidate. We do not think that by issuing this appeal, Shri Almel became the agent of respondent No. 1. Shri Almel is a Muslim and might have thought that anyone who helped the cause of the Muslims in the matter of the preservation of the Darga deserved the support of Muslims. The conduct of Shri Almel in issuing the pamphlet therefore stands satisfactorily explained. In this connection, we may refer to another pamphlet Ex. 134, dated 29th October 1955. Respondent No. 1 has stated in his evidence at Ex. 174 that one Hifajjarahman, who is a Congress M.P. from Delhi and the Secretary of the Jamayat-Ullm-Hind at Delhi, had come to Bijapur in connection with the Prophet's Day's celebrations. This Muslim M.P. made an election propaganda on behalf of respondent No. 1 by addressing a meeting on 29th October 1955. In Ex. 134, which is an appeal issued by some Muslims of Bijapur on 29th October 1955, to the Muslims in the Bijapur district to vote for the Congress candidate, respondent No. 1. We find the signature of Shri Almel at Serial No. 5. This goes to show that the Muslims of Bijapur were supporting the Congress candidate in preference to other candidates. They might have had their own reasons which impelled them to support the Congress candidate in preference to respondent No. 2 who is their co-religionist. We do not think that by affixing his signature to Ex. 134, Shri Almel made himself an agent of respondent No. 1 when we have it on record that he is not a Congressman and in municipal politics he has joined the party which is opposed to the

Congress. If the petitioner had succeeded in proving that the pamphlet Ex. 131 which contains an appeal of Shri Almel to the Muslim voters had been issued at the instance of respondent No. 1 then the argument of the learned pleader for the petitioner would have derived considerable force. On a careful consideration of the evidence regarding the printing and distribution of this pamphlet Ex. 13 on the 26th or on the 27th we are not satisfied that it was printed and distributed at the instance of respondent No. 1. On the contrary, we are inclined to hold that Shri Almel had on his own responsibility issued this pamphlet and in doing so he must have his own objects in view. We may point out that the municipal elections were to come out in March 1956 and Shri Almel who plays a prominent part in the municipal politics might have thought it to his benefit to issue the appeal to his co-religionists.

21. The learned pleader for the petitioner strongly urged that this pamphlet was printed and distributed at the instance of respondent No. 1. We think it convenient to dispose of the evidence bearing on this point. Shri H. S. Almel admits that he got it printed at the Radha Printing Press and that he paid Rs. 5 as printing charges. He does not say that he had given a certain number of pamphlets for distribution to respondent No. 1. No questions had been asked to him to that effect. Only two witnesses have been examined to show that respondent No. 1 had personally distributed these handbills. Shaiksaheb Mulla (Ex. 100) is the first witness. He has described himself as a Hamal. We do not discredit him on that ground but we find it difficult to accept his testimony in preference to that of respondent No. 1. In his cross-examination this witness has stated that handbills bearing the symbols of the candidates were dropped in the houses of voters. We do not think that a person of respondent No. 1's status in life would stand in a street and distribute such handbills among the voters. If he wanted to distribute the handbills he could have certainly engaged a boy on payment of a trifling amount for the purpose of distribution of handbills as is done by the owners of cinema theatres. Madhav Ramachandra Jadhav (Ex. 136) is the next witness who says that respondent No. 1 distributed the pamphlet. He has described his occupation as painting. The petitioner has stated in his evidence at paragraph 29 that his uncle's son Basalingappa Kotreppa is a photographer and a painter. Although respondent No. 1 has not brought evidence to show that the witness Madhav (Ex. 136) is connected with the petitioner's uncle's son, we are disposed to hold that the petitioner who has a large number of admirers in Bijapur town must have attracted the sympathies of this witness whose occupation is painting. We therefore are not disposed to attach much importance to the evidence of this witness when we find that it is opposed to the probabilities. The petitioner's witnesses have only stated that respondent No. 1 had distributed these pamphlets. The petitioner has not stopped at that but he has stated in para 25 of his evidence that Sarvashri Kanbur, Mahaldar, Sharnayya Vastrad, Ramji Devji, Hirachand Shah, Ambli and Almel had all distributed copies of these pamphlets. We do not think that these gentlemen who are all men of considerable status in society would have stopped to distribute the pamphlets when that job could have been easily done at a trifling cost. The whole story of distribution by respondent No. 1 is too fantastic to be believed. As stated already, in the absence of any evidence to show that Shri Almel who had got this pamphlet printed had handed over some copies to respondent No. 1 or his friends, we are not disposed to hold the petitioner's allegation in this behalf.

22. Respondent No. 1 had on 16th January 1956 submitted the return of his election expenses. Therein he has specifically stated that this pamphlet was not printed at his instance. He says that the printing was unauthorised. Ex. 179 is the original return of respondent No. 1's election expenses. It contains the following entries: "He was neither authorised nor instructed to issue his personal appeal. He issued without the knowledge of the candidate. However that is shown as unpaid". Respondent No. 1's evidence is that Rs. 5, the cost of printing, according to Shri Almel, was not paid to Shri Almel. Shri Almel however states that he was paid Rs. 5 by respondent No. 1. On this point we prefer to accept the testimony of respondent No. 1. If Shri Almel had got this pamphlet printed at the instance of respondent No. 1, he would not have waited to recover the costs of printing till 16th January 1956. The writing Ex. 135 which the respondent No. 1 had obtained from Shri Almel with regard to this pamphlet indicates that Rs. 5 must not have been paid by respondent No. 1 to Shri Almel because there is no mention in this writing that Rs. 5 were paid. In view of the wording of the writing we are not disposed to attach much importance to the argument

of the learned pleader for the petitioner that respondent No. 1 had filed his return after coming to know that an election petition was going to be filed against him and therefore he had deliberately shown this amount of Rs. 5 as unpaid.

23. We therefore do not regard Shri Almél as an agent of respondent No. 1 in the matter of his election propaganda.

24. Coming to the Darga incident proper, the facts which have come on record do not very clearly show whether this tomb was an ancient one or a recent construction. At any rate, this much is clear that a complaint about this tomb had been made by some of the rate-payers of the Municipality on 27th January 1955, i.e., long before the occasion for this bye-election arose. It is obvious, therefore, that the respondent No. 1 or any one supporting his election had no hand in the proceeding for the removal of the alleged encroachment. There is no evidence whatsoever to show that respondent No. 1 has taken sides in the course of the encroachment proceedings. Respondent No. 1 states that he became aware of the encroachment proceedings and the steps taken by the Municipality for the removal of the encroachment only when he saw the municipal servants engaged in the act of removal with the aid of the police on the 26th November. This means that although his house is opposite to the Darga, he was not aware of the activities going on in the town in the matter of the removal of the Darga. He may not have known the details of the encroachment proceedings but we find it hard to believe that till the 26th he was quite ignorant of the order passed by the municipal authorities for removing the Darga. At the trial, he has given evidence to show that on the 26th he left his house at 8 A.M. and went in the mufussil and he returned to Bijapur at about 3 P.M. If that had been the position, he would have certainly stated so in his written statement. His statement that he was not present at Bijapur when this encroachment was being removed by the municipal staff does not appear to be convincing. The petitioner, on the other hand, has tried to involve respondent No. 1 in this affair by saying that the Muslims faced with the removal of the tomb with the aid of the police had approached respondent No. 1 who was standing in front of his house and on being approached he left the place and brought Shri Jatti and Shri Ambli in a car on the scene and those two gentlemen asked the municipal staff to desist from removing the encroachment and when they were told that the removal was being done under the orders of the Collector, Shri Ambli posed a question to the municipal staff whether the Collector was greater or the Minister was greater. We are inclined to hold that the petitioner has twisted the real facts and the circumstances and has tried to make out a case against respondent No. 1 under section 123(2) by imputing the corrupt practice of undue influence to respondent No. 1 and his agents Sarvashri Ambli and Jatti. Before we accept the petitioner's case with regard to this Darga incident, we must be satisfied that the removal of the encroachment by the municipal staff with the aid of the police was actually stopped at the instance of Sarvashri Ambli and Jatti. We have carefully gone through the evidence on the point and we are not satisfied in our minds that the removal was stopped at the instance of Sarvashri Ambli and Jatti. Our chief reason for coming to this conclusion is that there is one piece of evidence which throws considerable doubt on the version of the petitioner.

25 It is an admitted fact that on 16th November 1955, the Collector had issued an order Ex. 116 calling upon the Municipality to remove the encroachment of the alleged Darga and to take police aid if necessary. This order of the Collector was received by the Municipal authorities on 17th November 1955 and they had necessarily to move in the matter. We find that on the 24th Shri Almél had called for the police help and he had fixed 26th November 1955 as the date for its removal. A suggestion was made on behalf of the petitioner that Shri Almél in collusion with respondent No. 1 and Ambli had fixed 26th November 1955 for removal of the encroachment with a view to take advantage of the presence of Shri B. D. Jatti and to get the order of removal cancelled or at least suspended. We have to note that Shri Payannavar was the President of the Municipality. Although the letter calling for the police aid on the 26th is signed by Shri Almél, we are not prepared to hold that Shri Payannavar has no hand

in fixing the date for removal of the encroachment. Ex. 77 is the office copy of the confidential letter written by Shri Payannavar to the Collector on 6th December 1955. This letter contains the following:

"In accordance with your direction contained in your letter No. MLS dated 16th November 1955, the Municipal staff was directed to remove the entire encroachment including the tomb in the middle of road in Ward III near C.T.S. No. 1436 and 1391 in Shahapet locality, on 26th November 1955. The staff started the removal of the encroachment. Compound round about the tomb was entirely removed and the tomb was still to be removed. At about 9-30 A.M. that day one of the Municipal Councillors told me in the office that there was a large crowd of people protesting the removal of the tomb and that there was tense atmosphere on the spot. I went to the spot and observed that a large crowd had gathered on the spot. The D.S.P., Bijapur, was pleased to make all sort of police Bandobast. In spite of all Bandobast I observed that the atmosphere was tense and the crowds gathered on the spot were likely to make breach of peace. Under the circumstance, I ordered that the Municipal staff to postpone the removal of remaining portion of encroachment i.e., tomb itself".

This would go to show that it was Shri Payannavar who had thought it necessary to intervene and stop the work of removal. Shri Payannavar has not been examined by the petitioner and we may note that no request was made to us to examine him as a Court witness. We may also refer to Ex. 76, which is a letter written by the Chief Officer to the Police Sub-Inspector, Bijapur City, on the very day, i.e., 26th November 1955. It is in evidence that P.S.I. was present to make Bandobast at the time of the removal of the encroachment at the express request of the municipal authorities. The Chief Officer wrote this letter Ex. 76 to the P.S.I. to the effect that the work of encroachment had been stopped under the orders of the President and the police are therefore relieved. The petitioner has not examined Shri Payannavar nor the P.S.I. nor the Chief Officer. These persons would have been the best witnesses to tell us how the Darga incident of the 26th had started, developed and come to an end. We have already stated that we are not quite convinced that respondent No. 1 was away from Bijapur on that day. At the same time we are not prepared to hold that it is proved to our satisfaction that Shri Jatti and Shri Ambli were brought on the scene by respondent No. 1 in a car and they had intervened and stopped the work of removing the encroachment. Shri Ambli states that on being informed that a large number of people had gathered, he went there and by the time he went the people had mostly dispersed. As a public worker and occupying an important position in the Congress organisation it is quite likely that Shri Ambli had been approached when a tense situation was created in the town and he went on the scene when he had thought it safe to go. Shri B. D. Jatti tells us that he was in the Congress Bhavan in the morning, that he had decided to leave for Bombay on that day, that he had gone to the house of respondent No. 1 to bid farewell and that he met Shri Ambli there and from there he went to the latter's house for dinner. He states that he had not at all taken any part in the Darga incident and he had not promised to use his influence for getting the said order cancelled. As observed above, as the best evidence which could have been available on the point has not been brought before us, we think that the petitioner's case that the work of removal was stopped by Shri Ambli by telling the municipal staff that a Minister was superior to the Collector cannot be held to be proved. The petitioner's case that Congress leaders were responsible for stopping the encroachment work no doubt finds some support from the wording of Exs. 131 and 151. Ex. 131 is the pamphlet containing Shri Almel's appeal to the Muslim voters and Ex. 151 is an application signed and made by a number of Hindus and Muslims to the Chairman of the Standing Committee on 7th January 1956 for permanently stopping the work of further removal of the tomb. In this application there is a statement Shri Ambli was brought on the scene at the time of the removal of the encroachment and he had stopped the work of removal. We may observe here that this document does not refer to the presence of Shri Jatti and therefore the evidence led on behalf of the petitioner that Sarvashri Jatti and Ambli had come together, that the Ministership of Shri Jatti was pitted against the authority of the Collector in the presence of the Muslims, who had gathered there, and that the municipal authorities were induced to stop the work of removal in deference to the presence of Shri Jatti cannot be literally accepted.

26. We may now refer to the actual evidence led by the petitioner and see whether the version as disclosed in that evidence is correct or whether the evidence disclosed by the Chief Officer's letter or Pavannavar's letter is correct.

27. Witnesses Mansursab Babasaheb Jahagirdar (Ex. 102) and Husainsaheb Aminsab Mulsavalgi (Ex. 139) are the two witnesses who speak about the Darga incident. Mansursab (Ex. 102) states that on 26th November 1955 he had gone to the Darga, that the municipal coolies were demolishing the Darga and that several Muslims had gathered there and Shri Jatti made a speech there. Husainsab (Ex. 139) does not say that Shri Jatti made a speech but he substantially sets out what the other witness has stated. Now it is clear from the evidence of these two witnesses that the Muslims had gathered there in large numbers and they had kept quiet when a part of the encroachment was removed but when the municipal coolies proceeded to remove the tomb itself they appealed to them not to remove the tomb as it was a Devasthan. In view of Shri Payannavar's letter Ex. 77, we must hold that a tense atmosphere was created by reason of the presence of a large body of Muslims and the threat of firing admittedly given by the police to the Muslims. We are therefore, inclined to accept the version as disclosed by the Chief Officer's letter Ex. 76 and Shri Payannavar's letter Ex. 77 and we are not prepared to hold that Shri Ambli and Shri Jatti stopped the work of demolition. We find it hard to believe that a person of the standing and experience of Shri Jatti would have allowed his presence to be exploited as deposed to on behalf of the petitioner. We therefore hold that Shri Ambli Shri Jatti had not resorted to any undue influence as alleged by the petitioner. Although it is proved that Shri Almel had issued a fervent appeal to his Muslim Brethren to vote for respondent No. 1, we are not satisfied that it was done at the instance of respondent No. 1. We are of opinion that he had done it on his own responsibility and mainly in furtherance of his own ends whatever they might be.

28. We have stated earlier that in view of the joint petition of the Hindus and Muslims which is at Ex. 151, it is highly doubtful whether Shri Jatti had taken any part in stopping the work of demolition on the 26th as alleged by the petitioner and his witnesses. Taking the most favourable view of the petitioner's case on the point, we think that all that Shri Jatti might have stated when he had gone to Shapet locality in the company of Shri Ambli was that if the Muslims voted for respondent No. 1 he would use his good offices and even perhaps his official position to see that the grievance of Muslims and Hindus in respect of the Darga would be get redressed by bringing it to the notice of the Department of the Government concerned for suitable action. It is quite evident that a person like Shri Jatti occupies a double role. He is a Congress leader and as such he enjoys a certain amount of freedom inherent in that position in expressing his views on the questions of the day. As a Deputy Minister he enjoys some privileges and has certain duties and responsibilities. Shri Jatti has told us that as a Deputy Minister three districts in each of the three parts of the Bombay State, viz., Gujarat, Maharashtra and Karnatak, have been assigned to him and that Bijapur district of the Karnatak region was assigned to him. He has further told us that his duty as a Deputy Minister was to receive complaints from the public about their grievances and to communicate them to Government for getting suitable redress. Now, when Shri Jatti had come to Bijapur to do election propaganda on behalf of respondent No. 1, a Congress candidate, he could not shed his position as a Deputy Minister and it was within the sphere of his duty as Deputy Minister to take interest in the grievances of the Bijapur public or a section of it with regard to the Darga in question. If therefore on being acquainted that a tense situation was created in Bijapur town by reason of the action of the municipality in demolishing the Darga with the aid of the police, he had gone to the Darga and had told the Muslims assembled there not to create any ugly incident but to disperse peacefully and that if they voted for the Congress he would do whatever he could to get their grievances suitably redressed, we do not think his action is open to objection. On first impression the action of the Deputy Minister may strike as amounting to undue influence for the purpose of interfering with the free exercise of electoral rights but on giving our anxious thought to the matter, particularly in view of the double role which is played by political leaders in a democratic Government, we think that the action of Shri Jatti does not necessarily amount to the using of undue influence within the meaning of section 123(2). Proviso (b) to section 123(2) is as follows:

"A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with the electoral right, shall not be deemed to be interference within the meaning of this clause".

In our opinion, the promise given by Shri Jatti to the Muslims and Hindus who had assembled there was nothing but a promise of a public action with



regard to the preservation of the Darga over which they had a grievance. The action which Shri Jatti had promised cannot be considered in our opinion to be his private action.

29. The learned pleader for the petitioner argued that but for the above-mentioned intervention of Sarvashri Ambli and Jatti, the petitioner would have secured about 2,000 Muslim votes and would have been elected. We are not at all able to accept this argument because in our opinion whatever number of votes had gone in favour of respondent No. 1 as a result of the alleged intervention of the Congress leaders would not have gone either to the petitioner or to respondent No. 2. Respondent No. 1 had been consistently supported by the Muslims leaders of Bijapur and we have no ground to think that either the petitioner or respondent No. 2 had done anything in connection with the Darga so as to induce the Muslims to take interest in them. Even the Muslim witnesses examined by the petitioner with regard to the incident have deposed that the petitioner had not come to their locality prior to the Darga incident for canvassing. All this indicates that the petitioner had practically no hopes of securing Muslim votes and it is in our view a mere speculation to say that, on account of the Darga incident he lost a certain number of votes and the election, was therefore materially affected.

30. Hence our findings on issues Nos. 7 and 8 as above.

31. We now take up the consideration of issue No. 5. The petitioner's case on this issue is that Ramji Devji is one of the leading merchants of Bijapur and that his car No. BYZ 1268 was procured by respondent No. 1 and his agents on the day of the election for transporting voters from Ibrahimpur to the polling booth near Gol Gumbaz and back. The petitioner does not state that he had himself seen the car of Ramji Devji being used as stated above. According to him, one Gurpadappa Halli told him after the election about the use of Ramji Devji's car by respondent No. 1 for the purpose of conveying voters on the day of the election. Gurpadappa's evidence is at Ex. 89. He states that on the polling day respondent No. 1 and Ramji Devji had come in a car to Ibrahimpur, that the car belonged to Ramji Devji, that it was standing in front of the house of Shivangouda, that there were five voters in his family and that all of them had come with respondent No. 1 in the car to the polling booth which was opposite to Gol Gumbaz. He further states that they got down near the temple of Pavadi Basappa and respondent No. 1 took them to the polling booth on foot, and after casting votes, they returned to the Pavadi Basappa's temple and were told to go to Ibrahimpur in the car. He states that 2-3 days after the election, he happened to meet the petitioner near the shop of the stationery merchant Shri Jatti and there the petitioner asked him in whose favour the people of Ibrahimpur had voted and he told him that respondent No. 1 had made arrangements for transporting voters by sending a car, that the petitioner had made no such arrangement and that therefore the people from the village had voted in favour of respondent No. 1. This witness tells us that he had come to know the petitioner only on the polling day. He denies the suggestion made to him that he was a canvasser for Dr. Nagur. The fact that Dr. Nagur had questioned him in front of Jatti's shop as to in whose favour the villagers of Ibrahimpur had voted indicates that he was a canvasser for Dr. Nagur.

32. The next witness Saibanna Hirenappa Dambal (Ex. 149) states that Ramji Devji's car had come to Ibrahimpur on the polling day and that he and his wife had gone in that car to the polling booth. In his cross-examination he says that he does not know Dr. Nagur and that Dr. Nagur had held a meeting two months ago and in that meeting he had said that those who knew the real facts should come before the Tribunal and give evidence. We are inclined to think that this witness had come to give evidence either because he bears a grudge against respondent No. 1 or the Congress or he wants to oblige the petitioner who seems to commend a considerable following. The witness has stated in his cross-examination that he was serving formerly in the Bijapur Municipal Borough as a temporary Mukadam and that he was discharged after two months of service. The witness has described himself as a weaver. We are inclined to think that the evidence of this witness is not worthy of belief. Ramji Devji has been examined as a witness of respondent No. 1 at Ex. 206. He is one of the leading merchants of Bijapur. He says that the car belongs to him and his five partners. It seems to us not very probable that respondent No. 1, who is a pleader, could have openly violated the provisions of section 133 of the Representation of People Act which lays down penalty for illegal hiring or procuring of conveyance at

elections. Ramji Devji is also not likely to make his car available for the purpose of transporting voters. It has come in evidence that a number of police officers were moving about the polling booths and if respondent No 1 had been carrying voters to and from Ibrahimpur, on the polling day, the petitioner or his agents would not have failed to bring this fact to the notice of responsible police officers. There is no evidence whatsoever to that effect and hence we are not inclined to accept the petitioner's case on this point. Evidence has been led to show that Ramji Devji is a trusted friend of respondent No 1 and that he had been taken to Ibrahimpur in company of respondent No 1 to induce the villagers of Ibrahimpur to vote in favour of respondent No 1, but we do not find that there is any substance in it because Ramji Devji has stated that he had never visited Ibrahimpur before and that not a single person from that village has a khata account in his Dalali shop. Ramji Devji was cross-examined by the learned pleader for the petitioner at very great length to show that his account books were not properly maintained, that respondent No 1 had purchased a large quantity of petrol on the polling day or previously for using the car of Ramji Devji and that this purchase of petrol and the payments made thereafter were not shown in the bills issued by the Karnatak Engineering Co. otherwise known as Caltex Co. We have not been able to find any substance in the suggestions made by the learned pleader for the petitioner that Ramji Devji's account books are not worthy of belief, that respondent No 1 had purchased a good deal of petrol for Ramji Devji's car and that the purchases were not shown in the account books of Ramji Devji. We do not think that there is anything in the petrol bills which substantiates the petitioner's case that respondent No 1 had purchased petrol for Ramji Devji's car and had paid for it. On the contrary, the petrol bill Ex. 231 negatives the petitioner's contention that any petrol was purchased on the 27th and was paid for by respondent No 1. It seems to us that this allegation is made because transporting voters by a candidate is a major corrupt practice and the petitioner wanted to set out as many corrupt practices as possible in his petition. In the circumstances of the case, we are not prepared to hold that the petitioner has proved that respondent No. 1 and his agents and other persons with the connivance of respondent No. 1 procured the motor car of Ramji Devji for the conveyance of voters of Ibrahimpur to the polling booth situated near the Gol Gumbaz and back.

33. We now come to the incident at Shivangi. The petitioner's story is that Shankargouda Padganur is a Congress M.L.A. and therefore a strong supporter of respondent No. 1, that on coming to know that respondent No. 1's prospects at Shivangi were bleak, respondent No 1 had sent him specially to Shivangi on the polling day for the purpose of doing his best to secure as many votes as possible for him, that this witness was purposely selected because he was moving in the village in the role of a *Kirtankar* and therefore was specially qualified to make an appeal on religious grounds to Harijan voters, that accordingly Shankargouda visited Shivangi at about 10 a.m. on the polling day and met Siddappa Dang (Ex. 90) when he was casually sitting on the katta of his house in the company of 8-10 Harijans, that Shankargouda asked them to vote in favour of respondent No. 1 and on being told that they had already promised their votes to the petitioner, he insisted that respondent No 1 should be supported at the election and on being told that it could not be done, he picked up the chappal of Siddappa Dang and placed it on his own head and refused to remove it unless and until the Harijans promised their votes to respondent No. 1. The petitioner's case is that the Harijans of Shivangi and other villages in Bijapur taluka regard leather as a symbol of wealth and placing it on the head as above is tantamount to inviting the wrath of the goddess of wealth and that the Harijan voters of Shivangi had given their votes in favour of respondent No 1 on account of this trick played by Shankargouda. Shankargouda has totally denied the story and stated that he had stopped at Shivangi in the evening of the 27th when he was on his way to Chadchan via Bijapur and that he had not behaved as alleged by the petitioner and Siddappa Dang. He further states that the whole incident has been put forward by the petitioner to ridicule him in the eyes of the public.

34. Holers and Madars are to be found everywhere, but as we were not aware that they regard the placing of chappals on the head as inviting the wrath of the goddess of wealth, we were not prepared to accept the argument that respondent No 1 should be deemed to have admitted the belief inasmuch as he had not specifically denied its existence in his written statement. The first point which we have therefore to consider is whether the petitioner has proved the existence of the alleged belief among the Harijans. No authority has been cited in favour of the existence of such a belief or superstition. The learned

pleader for the petitioner had stated in the course of the trial that he would produce a book on Castes and Customs in the Western India to support the petitioner's case on the point but that book was not produced before us nor was any other authority cited. We are not, therefore, prepared to hold that the placing of a chappal by some one on his head is regarded by Harijans as inviting wrath of the goddess of wealth. The petitioner has stated in his own evidence that he had been to Shivangi to address a meeting and that on every Friday he used to hold meetings and expose the selfish and unjust activities of the local Congress leaders. It appears that Shankargouda is a person of considerable influence at Shivangi and surrounding villages and naturally the petitioner must have regarded him as hostile to himself. We do not think that Shankargouda, who is an M.L.A. and a *Kirtankar*, would have stooped so low as to place a Harijan's chappal on his head in a public place and thereby make himself an object of ridicule. Even according to the petitioner, Shankargouda is a reputed religious preacher. It was certainly easy for Shankargouda to secure a good many votes of the Harijans for the Congress candidate by pointing out to them what the Congress had preached and done for the removal of untouchability and for improving the social and economic conditions of the Harijans. Siddappa Dang (Ex. 90), who is examined by the petitioner to prove the chappal incident, does not inspire our confidence. He states that the petitioner had come to his village 15 or 20 days prior to the polling day and the Harijans had decided to vote for the petitioner, but he admits that after the petitioner's meeting, two meetings were held by the Congress. He admits that Virupaxayya, Kori Shankarappa, Halemani Siddappa and Janaraddi are the petitioner's people and they were present in the village on the polling day on his behalf. According to him, the so-called chappal incident lasted for about 2 minutes. It is strange that the police, who were admittedly present, were not informed by the petitioner and his agents and supporters about this incident.

35. The next witness is Patel Raddi (Ex. 96). He states that Siddappa Dang (Ex. 90) told him on the evening or the polling day that Shankargouda Padganur had come and placed Siddappa's chappal on his head and that he had informed Dr. Nagur about it two days after the election. This witness appears to be interested in the petitioner as otherwise there was no reason why he should have gone of his own accord to the petitioner's office at Chatre Chawl 2 days after the election. His statement that he had canvassed for none of the candidates and that he does not know if any of the petitioner's workers had come to Shivangi does not appear to be straightforward. The suggestion made to him in the cross-examination that he had come to give evidence in favour of the petitioner being his partizan appears to be based on truth. The petitioner has stated that neither Siddappa nor Patel Raddi was his follower, agent or canvasser, but Siddappa says otherwise. The evidence of Irappa Murigeppa (Ex. 84) is to the effect that a day or two after the election, he was sitting in the petitioner's office in Chatre's Chawl and there Patel Raddi and Virupaxayya came and told the petitioner about the incident at Shivangi. Irappa is a resident of Bijapur and evidently he has no personal knowledge of the incident. His evidence does not help the petitioner.

36. Respondent No. 1 has examined Lakkappa Manikappa of Shivangi at Ex. 214 and he has stated that Siddappa Dang is his kinsman, that Shankargouda had not come on the polling day in the morning as alleged by the petitioner, that he had not induced the Harijan voters to vote for the Congress candidates by placing the chappals on his head and that Holers and Madars do not regard chappal as a symbol of wealth. This witness is a member of the Gram Panchayat and therefore a man of some status in the village. In this state of evidence on the point, we hold that the petitioner's story regarding Shivangi incident is not proved. Hence our finding on issue No. 2 in the negative.

37. We now come to issue No. 9. The petitioner's case is that Respondent No. 3, who had filed his nomination paper and who had contested the election, held the office of the Police Patil of Kannur and Katkanhalli and as such he was holding an office of profit within the meaning of Article 191 of the Constitution of India Act and was therefore disqualified for being chosen as a Member for the State Legislative Assembly. It was not seriously disputed before us that respondent No. 3 was working as a Police and Revenue Patil of Kannur and Katkanhalli. We hold that as such he was holding an office of profit and was therefore disqualified under Article 191 of the Constitution of India Act. We are not impressed by the argument advanced by the learned pleader for respondent No. 3 that the Police Patil cannot be considered to be a servant of Government being a hereditary *watandar*. We think that the *watan* property which is enjoyed by the Patil stands for remuneration of the services rendered by him to the Government and therefore he must be considered as a Government servant holding an office of profit within the meaning of Article 191.

38. The real question which we have to consider under this issue is whether the nomination paper filed by respondent No. 3 was improperly accepted by the Returning Officer. The argument of the learned pleader for the petitioner is that inasmuch as respondent No. 3 suffered from an absolute disqualification under Article 181, the Returning Officer could not by accepting his nomination paper confer upon him the eligibility for membership of the State Assembly and therefore the acceptance of his nomination paper by the Returning Officer must be deemed to be improper. On the other hand, the argument of the learned pleader for respondent No. 1 is that we have to consider the provisions of the Representation of People Act relating to the scrutiny of the nomination papers and the duties of the Returning Officer in that behalf and to see whether the Returning Officer's action in accepting the nomination paper filed by respondent No. 3 can be considered improper. We have looked into the provisions bearing upon this topic and we think that the argument of the learned pleader for respondent No. 1 should be accepted. After the nomination papers have been filed the Returning Officer has a statutory duty to fix a date for holding scrutiny of the nomination papers and he is required on a summary inquiry to consider the objections, if any, raised by the rival candidates. We accept the position that the Returning Officer is not prevented from holding any inquiry *suo motu* with regard to the qualifications and disqualifications of the persons who have filed their nomination papers with him. An attempt was made by taking out from respondent No. 3 that the Returning Officer Shri D'Mello in his capacity as Prant Officer had come to know that respondent No. 3 was a Police Patil. But we are not prepared to hold that Shri D'Mello as a matter of fact knew that respondent No. 3 was an officiating Patil. If the petitioner wanted to establish this point, he ought to have placed before us better evidence on the point than the interested testimony of respondent No. 3. It is an admitted fact that none of the rival candidates had raised any objection to the nomination paper of respondent No. 3. It is quite plain from the record that the petitioner is a very keen and ambitious political worker. If such a person kept quiet and did not bring it to the notice of the Returning Officer that respondent No. 3 suffered from an initial disqualification, there was nothing before the Returning Officer to reject his nomination paper. We are not prepared to hold that respondent No. 3's nomination paper was therefore improperly accepted. Sub-section 7 (a) of section 36 of the Representation of People Act indicates that unless it is proved that a candidate is disqualified under the Constitution Act, the Returning Officer would be justified in accepting the nomination paper. We, therefore, hold that the Returning Officer did not act improperly in accepting the nomination paper of respondent No. 3. In our opinion, this petition is not covered by the provisions of section 100(2) (c) because respondent No. 3 is not a returned candidate but it may fall under section 100(1) (c). Under that provision we have only to consider whether the Returning Officer has improperly accepted the nomination paper of respondent No. 3 and whether that acceptance has materially affected the result of the election. We have already held that the nomination paper of respondent No. 3 was not improperly accepted. Assuming that respondent No. 3's nomination paper was improperly accepted, the petitioner cannot obtain a declaration that respondent No. 1's election is void unless he proves that the result of the election was materially affected by improper acceptance of respondent No. 3's nomination paper. The learned pleader for the petitioner argued that all or most of the votes which respondent No. 3 had secured would have gone in favour of the petitioner if respondent No. 3's nomination paper had been rejected. He developed his argument by stating that respondent No. 1 had stood as a Congress candidate and therefore all the voters who wanted to favour the Congress had given their votes to respondent No. 1. Similarly, he contended that respondent No. 2 had stood as a Communist and the voters who favoured the Communist ideology had given their votes in favour of respondent No. 2. So the only two remaining independent candidates stood to gain the votes of those who were not in favour of respondent No. 1 or respondent No. 2. This argument apparently is very specious but on closer analysis it cannot be safely accepted. It is quite clear from the evidence of the petitioner's witness Murigeppa Sugandhi (Ex. 79) and the evidence of respondent No. 2 that respondent No. 2 had not entered the election arena only as a Communist candidate. Respondent No. 2 has admitted that his symbol was Engine and that was not the official symbol of the Communist Party at the Election. It is quite clear from his evidence that he had counted upon the support of his co-religionists and also of those persons who were opposed to the Congress. Shri Murigeppa Sugandhi was at one time a leading person in the Congress politics of Bijapur but he was expelled from the Congress and he thereafter took a leading part in forming the Karnatak Ekikaran Party. Shri Sugandhi has stated that this party had given its support to respondent No. 2. Respondent No. 2 himself has stated that he had the support of the Karnatak Ekikaran Party, Akhand Karnatak Rajya Nirmana Parishad, Com-

munist Party and influential non-party men. In other words, this means that he had banked upon the support of all the elements in the society which were hostile to the Congress, in addition to the support which he had naturally expected from his co-religionists. Respondent No. 3 is a Police Patil of an ordinary village in Bijapur taluka. It seems to us that he must have expected to get support from the voters under the influence of his brother Police Patils of different villages because there is no evidence whatsoever to show that apart from his Patilship he has any political activities to his credit. The votes which he had secured, we think, were mainly due to his position of local influence as a Patil. If he had not stood for the election, the voters who had given their votes to him had before them three candidates, the petitioner, respondent No. 1 and respondent No. 2. We think it extremely doubtful whether these voters would have all voted in favour of the petitioner. It is quite likely that the Muslim voters or at least a majority of them would have either voted for the Congress or for respondent No. 2. It has already come in evidence that the prominent Muslims of Bijapur had given their fullest support to the Congress candidate. Those voters who were opposed to the Congress would have given their votes either to respondent No. 2 or the petitioner. The petitioner has examined three witnesses to show that the general atmosphere in the villages from which respondent No. 3 got support was in favour of the independent candidate. That evidence does not in our opinion advance the case of the petitioner. The petitioner has not placed before us any convincing evidence to show that he would have secured all or most of the votes in his favour. In this connection we may refer to the case of *Vashist Narain Sharma v. Dev Chandra* (A.I.R. 1954 S.C. 513). At pages 515 and 516, the Supreme Court has observed as follows:

"But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate.

"The casting of votes at an election depends upon a variety of factors and it is possible for any one to predict how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by section 100 (1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand."

Therefore we are unable to hold that the result of the election was materially affected by the acceptance of respondent No. 3's nomination paper.

39. Having considered all the material points bearing upon this topic, we have reached the conclusion that the election of respondent No. 1 cannot be set aside under the provisions of section 100(1)(c).

40. We have also reached the conclusion on the evidence placed before us that the corrupt practice of bribery has not been proved in this case. The argument of the learned pleader for the petitioner that a promise made by Congress leaders including Shri Jatti with regard to the Darga and its subsequent fulfilment at the hands of the Government amounted to offering bribe in the form of spiritual gratification. We have serious doubts in our mind as to whether spiritual gratification of this sort is within the scope of bribery as contemplated by the Representation of People Act. The Constituency in question had 56 polling booths and the evidence led by the petitioner, even if true, does not go to show that the election had not been a free election by reason of the corrupt practice of bribery and undue influence. There is in our view no ground to think that these practices had prevailed to any large degree much less extensively.

41. Lastly, we come to the question of costs. The learned pleader for respondent No. 1 has put forward a strenuous argument that exemplary costs should be awarded to respondent No. 1. We have considered the evidence as a whole in the case and we have also taken into consideration the part played by the petitioner, respondent No. 1 and their respective agents and supporters in

connection with the various incidents and we have reached the conclusion that this is not a fit case for saddling the petitioner with respondent No. 1's costs. We think that all the parties to this petition should bear their own costs.

42. Before parting we should like to record our sense of appreciation of the valuable help rendered by the learned pleaders appearing on both sides in deciding this case.

#### ORDER

43. The petition is dismissed. Parties to bear their own costs.

(Sd) G. N. KATRE, and A. A. ADARKAR—*Members.*

(Sd.) N. S. METRANI—*Chairman.*

The 11th August 1956.

#### ANNEXURE

Ex. 31.

ELECTION PETITION No. 1 OF 1956.

Dr. B. K. Nagur—*Applicant-petitioner.*

*Versus*

Mr. R. S. Bulgouda and two others—*Respondents*

#### ORDER

At the time of framing issues in this petition the learned pleader for the petitioner and the learned pleaders for respondents Nos. 2 and 3 suggested that necessary issues should be raised to cover all the contentions raised by respondents Nos. 2 and 3 in their pleadings. The learned pleader for respondent No. 1 had no objection to raise the issues arising out of the allegations made in the petition and the list annexed to it and also respondent No. 1's pleadings. In other words he objected to the raising of the issues with regard to the allegations made by respondents Nos. 2 and 3 but which were not mentioned by the petitioner in his petition itself. The Tribunal decides that it is not open to the petitioner as well as respondents Nos. 2 and 3 to claim a trial on issues with regard to the grounds not raised in the petition. The reasons are briefly these:

2 The Representation of People Act, 1951, contemplates the filing of a formal petition for the purpose of calling into question an election. The Tribunal is appointed to try such an election petition. The Act contemplates filing of more than one election petition for the purpose of setting aside a single election, and it was open to respondents Nos. 2 and 3 to make their own petitions satisfying the provisions of the Act. Respondents Nos. 2 and 3 not having made a formal election petition, cannot now be permitted to prove the allegations which are not contained in the petition itself and thus evade the stringent proviso with regard to limitation and furnishing of cash security. This view of ours finds support in the case reported in Election Law Reports, Vol. VII, Part II, page 165 and page 169 (M. Muthiah v. A. S. Subbarai and others). We therefore, reject the prayer of the petitioner and respondents Nos. 2 and 3 in this behalf.

(Sd) KATRE and (Sd) ADARKAR—*Members.*

(Sd.) N. S. METRANI—*Chairman.*

The 11th August 1956.

[No. 82/1/56/23044.]

By order,

A. KRISHNASWAMY AYYANGAR, Secy. v